

1 SID WOLINSKY (CA Bar No. 33716)  
2 JULIA PINOVER (CA Bar No. 255088)  
3 DISABILITY RIGHTS ADVOCATES  
4 2001 Center Street, Fourth Floor  
5 Berkeley, California 94704-1204  
6 Telephone: (510) 665-8644  
7 Facsimile: (510) 665-8511  
8 TTY: (510) 665-8716  
9 Email: general@dralegal.org

6 DANIEL MASON (CA Bar No. 54065)  
7 JOSE UMBERT (CA Bar No. 227318)  
8 ZELLE HOFFMANN VOELBEL MASON & GETTE LLP  
9 44 Montgomery Street, Suite 3400  
San Francisco, California 94014  
Telephone: (415) 693-0700  
Facsimile: (415) 693-0770

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**

DISABILITY RIGHTS ADVOCATES  
2001 CENTER STREET, THIRD FLOOR  
BERKELEY, CALIFORNIA 94704-1204  
(510) 665-8644

14 WESTERN REGIONAL ADVOCACY  
15 PROJECT, a nonprofit organization, and  
16 CALVIN DAVIS, on behalf of himself and all  
17 other individuals similarly situated, and  
18 ANTHONY COLEMAN, on behalf of  
himself and all other individuals similarly  
situated.

19 Plaintiffs,

20 v.

21 MAYOR GAVIN NEWSOM, in his official  
22 capacity, BOARD OF SUPERVISORS OF  
23 SAN FRANCISCO COUNTY, in their official  
capacity,

24 Defendants.

Case No.: CV 08 4087

CLASS ACTION

OPPOSITION OF PLAINTIFFS TO  
DEFENDANTS' ADMINISTRATIVE  
MOTION TO CONTINUE INITIAL CASE  
MANAGEMENT CONFERENCE

Judge: Hon. Maxine M. Chesney

1 Plaintiffs Western Regional Advocacy Project, Calvin Davis, and Anthoney Coleman  
2 (“Plaintiffs”) hereby oppose the administrative motion of Defendants Mayor Gavin Newsom and  
3 the Board of Supervisors of San Francisco County (“Defendants”). Defendants seek to continue  
4 the initial case management conference for this proceeding. Pursuant to its established  
5 procedures, this Court already has scheduled the case management conference for December 5,  
6 2008. Defendants request that it be delayed to January 9, 2009, which would prevent the case  
7 management conference from being held until over four months after the filing of the Complaint.

8 The sole basis for Defendants’ request is their filing of a motion to dismiss. A mere hope  
9 of Defendants that they might succeed on a motion constitutes an insufficient reason to disrupt  
10 the orderly administrative scheduling and case management processes of this Court. Moreover,  
11 the delay sought by Defendants will severely prejudice Plaintiffs, who are vulnerable and  
12 destitute. Further, little if anything will be gained by delay. For these reasons, the administrative  
13 motion should be denied.

14

15 **Delay Would Severely Prejudice Plaintiffs**

16 This lawsuit was filed August 27, 2008, on behalf of a class consisting of people who are  
17 homeless, poverty-stricken, and disabled. Plaintiffs allege that Defendants engage in  
18 discriminatory practices that exclude homeless people with disabilities from shelter beds and  
19 essential shelter services. This continuing conduct that denies at-risk, disabled homeless persons  
20 meaningful access to the emergency shelter beds they desperately need causes them  
21 unimaginable hardship. Any delay in obtaining relief from Defendants’ discriminatory practices  
22 only compounds that hardship by postponing important administrative matters essential to the  
23 orderly and prompt resolution of this lawsuit — whether through litigation or alternative dispute  
24 resolution — just as the worst conditions of the winter season approach.

25 As Plaintiffs allege in detail, every day many homeless disabled people are unable to find  
26 a shelter bed because of Defendants’ conduct. There are approximately three homeless adults  
27 needing emergency shelter for every one of the beds available. Each night, at least 2,800  
28 homeless people sleep without any shelter. As many as eighty percent of homeless persons are

1 disabled. By operating their emergency shelter and other welfare programs with the express goal  
2 of eliminating “the incentive for homeless people who want cash rather than services to  
3 congregate” in San Francisco, Defendants effectively screen out men and women with  
4 disabilities from the emergency shelter program and deny shelter to many homeless persons  
5 solely because of their status as disabled people. At the same time, Defendants deliberately have  
6 reduced the already scarce number of shelter beds available to homeless persons, thus further  
7 marginalizing the disabled homeless population. Defendants’ systematic exclusion of disabled  
8 men and women from their shelter program forces them either to sleep on the street or to  
9 compete for access to a shelter bed in a system in which they are severely disadvantaged.

10       Although a one-month delay may be inconsequential to Defendants, for Plaintiffs it  
11 means they must continue to endure intolerable and life-threatening conditions in the streets,  
12 alleys, abandoned buildings and public parks of San Francisco.

13

14 **The Requested Action Would Disrupt the Orderly Process of this Suit**

15       On September 10, 2008, shortly after the filing of this action, the Court issued its  
16 scheduling order setting the case management conference for December 5. Accordingly,  
17 pursuant to Fed. R. Civ. P. 26(f)(1), the parties would be required to meet and confer no later  
18 than November 14. The parties had agreed to meet on November 4, but at Defendants’ request,  
19 Plaintiffs extended Defendants the courtesy of several extensions. If the case management  
20 conference is continued to January 9, 2009, as Defendants request, the obligation to meet and  
21 confer will follow the December 5 hearing on the motion to dismiss by only a couple of weeks.  
22 It is unclear whether Defendants expect the Court necessarily to render a decision on their  
23 motion to dismiss by that time. In Plaintiffs’ view, it is not at all certain that Defendants’ motion  
24 will be decided so quickly. Thus, the “wasted” time and effort Defendants claim they seek to  
25 avoid may be necessary even if the Court grants their motion for a continuance.

26

27

28

#### **Postponing the Case Management Conference Would Delay Any Potential Resolution**

Furthermore, Defendants' attempt to delay the case management conference, if successful, also would delay initial disclosures as well as alternative dispute resolution, which Plaintiffs have repeatedly requested. In addition, a continuance of the case management conference would preclude Plaintiffs from obtaining information necessary to ascertain whether to file any motions that might be appropriate. Finally, the amount of time and effort Defendants seek to avoid is minimal — a single Rule 26 Meet and Confer court appearance on the *same day* as the hearing on Defendants' motion to dismiss: December 5, 2008.

Plaintiffs respectfully submit that the Court's administrative case management procedures should not be disrupted by Defendants' unilateral hope that they will succeed in having each and every claim alleged by Plaintiffs dismissed by the Court before January 9, 2009. Defendants' administrative motion to continue the case management conference should be denied.

Dated: November 6, 2008

SID WOLINSKY  
JULIA PINOVER  
DISABILITY RIGHTS ADVOCATES

By: Sid Wolinsky  
SID WOLINSKY

Attorneys for Plaintiffs

\Server\Cases\WRAP.Newsom\Pleadings\OppositionToAdmMotion.doc